

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 02-6
Schools and Libraries Universal Service)	
Support Mechanism)	
)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel applauds the efforts underway at the Federal Communications Commission (“Commission”) to reform the universal service schools and libraries program. The time is ripe to revamp the program, which currently fails to recognize the importance of wireless services in promoting the educational mission of the nation’s schools and libraries.

In undertaking the E-Rate program modification, the Commission must address effectively the need of schools and libraries to use telecommunications services in new and different ways that can enhance and secure the learning environment. To do so, the Commission must overhaul, clarify and, more importantly, broaden the service eligibility criteria that is utilized by the Commission’s program administrator, Universal Service Administrative Company (“USAC”), to ensure that schools and libraries are provided the flexibility to choose appropriate services. In particular, wireless service offerings must be unconditionally eligible for discount funding in the same manner that traditional landline services are unconditionally eligible. By modifying the USAC Eligibility List and removing the conditional eligibility of mobile wireless services in the hands of teachers, administrators, security personnel and others a school deems should have mobile communications capability, the Commission will help foster a safe and secure learning environment that schools seek to establish.

Consistent with this change, wireless service should be funded regardless of whether it is “used only” for security purposes. Restricting or even denying access to cost effective two way voice communications in a school emergency is an unsupportable position. Indeed, as both the Joint Board on Universal Service has stated and this Commission state at the outset of this proceeding, schools and libraries should be encouraged to make responsible choices among available communications services. Wireless services should not be a restricted option for these

institutions that, in today's world, need the ability to provide students with a safe and secure educational environment.

The Commission must rationalize unwarranted distinctions in eligibility both between CMRS and other telecommunications services and within subcategories of wireless services. The uncertainty of the funding criteria necessarily limits the communications options available to schools and libraries. In some instances "conditional" eligibility makes it too risky for certain institutions to choose certain cost effective and functional service offerings because they fear that they may be denied funding for the entire suite of services contained in their annual application. This is not an acceptable outcome in today's telecommunications marketplace. The Commission must address the inconsistency of treatment between landline and mobile wireless service providers as well as between paging service providers and "broadband" CMRS providers, and give schools the tools they need to create a secure learning environment where children can be educated

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Permitting schools and libraries full flexibility among telecommunications services also eliminates the potential impediment that new technologies will not be available to schools and libraries until the Commission has had the opportunity to conduct a proceeding to review evolving technological needs. . . . This flexibility should encourage schools and libraries to use both the most efficient services and the most efficient technologies, including wireless and other emerging new media. . . . We recognize that all technologies have their advantages and disadvantages and conclude that it would be best to permit individual schools and libraries to evaluate those relative costs and benefits with respect to their individual needs and circumstances. Federal State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 322-23 (1996).

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby files comments in response to the Federal Communications Commission ("Commission" or "FCC") Notice of Proposed Rulemaking on the Universal Service program supporting discounted service to eligible schools and libraries.¹ The Commission now has had several years of experience with this program and Nextel strongly supports the Commission's initiative to improve its administrative simplicity and predictability.

¹ Schools and Libraries Universal Service Support Mechanism, *Notice of Proposed Rulemaking and Order*, CC Docket No. 02-6, FCC 02-8 (rel. January 25, 2002) ("Notice").

There is no doubt that the Schools and Libraries Program has had a positive impact on students nationwide, as access to telecommunications services and to the Internet has improved demonstrably. The challenge in the Commission's current review is to address effectively the need of schools and libraries to use services in new and different ways as the perceived needs of schools change. The most significant step the Commission can take is to revamp the service eligibility criteria its program administrator uses, thereby restoring to schools and libraries the flexibility to choose appropriate services in the way that Congress intended. Consistent with the public statements of the Federal-State Joint Board on Universal Service and of this Commission, schools and libraries should be encouraged to make responsible choices among many available services.

I. Nextel Supports the E-Rate Program

Nextel is a Commercial Mobile Radio Services ("CMRS") provider with over eight million wireless service subscribers nationwide. Nextel offers a variety of wireless services, including digital cellular service and Direct Connect[®], which is a digital, enhanced form of two-way dispatch radio service that can instantly connect workgroups throughout broad geographic areas. Nextel also offers its subscribers wireless Internet access, other information service applications and two-way short messaging, as well as voice mail, teleconferencing and other advanced calling features and functions.

From the very inception of the Commission's E-rate program, schools and libraries have demonstrated a strong interest in purchasing discounted wireless telecommunications services. Generally, mobile wireless services offer schools tremendous flexibility at a reasonable price. Unlike a landline telephone, no wiring of individual classrooms is required to link teachers to other teachers, school administrators, or parents, or to teleconference students in a classroom

with special interest speakers. Moreover, wireless phones can easily move to wherever instruction is taking place — whether that be on the school's campus or off-site on a student field trip.

Nextel was specified as a program service vendor by a number of schools in the first year of the program, and schools' interest in Nextel's services has grown substantially each year. For example, Nextel provided discounted services to 48 schools in the first funding year, to approximately 250 schools in the second year and to at least 719 schools in the third year of the program. In funding year four, Nextel provided discounted services to 1,450 schools and in year five the applications including Nextel climbed to 1,824. Thus, there is a real demand for wireless services in schools. As discussed below, however, the E-rate program has not been applied flexibly to permit schools to freely purchase discounted mobile wireless services. This must change. Particularly in light of recent developments highlighting the need for emergency and security communications capability, schools and libraries should have the discretion to purchase discounted wireless service for all members of school staff, including school facility and security personnel to secure, and thereby enhance, the learning environment. Providing clarification on this use of wireless technology would provide all parties the necessary certainty that services would be funded and applications not rejected due to the ambiguities of the current Universal Service Administrative Company ("USAC") Service Eligibility List.

II. The Eligibility of Mobile Wireless Services Must Be Broadened.

In light of the obvious and growing interest by schools in using wireless service under the E-rate program, Nextel dedicated significant resources to support the schools and libraries applying for wireless services discounts. It did not take long, however, before applications for Nextel's services raised eligibility issues. In often inconsistent processing results, some schools

had their funding applications rejected by the Schools and Libraries Division (“SLD”) of USAC due to apparent SLD application processor concerns about certain wireless services eligibility, while other schools’ applications for similar services were granted. Similarly, some schools had applications granted in one processing year, only to have their applications for the same service denied in subsequent funding years. These inconsistent decisions have proved confusing for applicants and, perhaps more importantly, have proved harmful to the E-rate program as teachers, students and administrators have been denied the ability to access much-needed telecommunications services.²

These problems of course were not unique to Nextel. Indeed, it was plain from the beginning that there was a level of subjectivity regarding the eligibility of certain mobile wireless services for discount funding that caused some funding applications to be granted while others were rejected. Reference to the current SLD Service Eligibility List illustrates the problem. “Cellular Service” is listed as having “conditional” eligibility.³ Unlike landline telephone service, which has no conditions upon its eligibility for funding, cellular service

² Lenape Regional High School District in Shamong, New Jersey, the Catherine McCauley High School in Brooklyn, New York, and the Seed School in Washington, D.C. are just a few examples of schools that were provided funding in year three and then denied funding for year four.

³ Specifically, The Eligibility List maintained by USAC states that “Cellular Service is eligible for discount when provided for use at the place of instruction and for educational purposes. The use of the phone must support instruction (including learning in a library) or support curriculum or instruction management. Cell Service for teachers, teachers aides, principals, curriculum coordinators, superintendents, and librarians, for example, would be eligible. Generally, cell service for school or library personnel not involved with instruction, such as cafeteria directors, maintenance personnel, facility directors, would not be eligible unless those individuals also provide instruction, in which case they would. The service is not eligible if used only for security purposes, including security purposes on school buses.” See Schools and Libraries Eligible Services List at 2 (dated October 17, 2001).

provided by CMRS carriers is eligible for discount funding when used in an “instructional” setting. Each applicant must determine what it believes constitutes an appropriate instructional setting, and it is possible that the SLD application processor may disagree with a particular applicant’s view. Additionally, the “instructional setting” can change from day-to-day as students are taught via field trips to educational locations. While such locations are not on-campus, they are certainly an “instructional setting” that can greatly benefit from wireless — as opposed to wired — technologies.

The danger to a school of guessing wrong or of a service provider giving advice that is later contradicted by the SLD is substantial. If the SLD deems a service to be ineligible and that service constitutes 30% or more of the overall funding request, then under the SLD’s processing policies the school will have its entire application for funding rejected. This is a result of the SLD’s *arbitrary* 30% ineligible services standard, which permits an SLD application processor to reject an application for funding if the processor determines that more than 30% of the services applied for are ineligible services.⁴

While Nextel appreciates the need for application processing policies that speed resolution and control administrative cost, there should never be an instance where a school, having made a good faith interpretation of a murky eligibility standard, is penalized by a total denial of funding. Fundamentally, the best solution to this problem, at least where it appears in a

⁴ Indeed, the “30 percent policy” is not a rule adopted by the Commission, rather it is an internal SLD benchmark utilized during its application review process, to “enable SLD to approve funding requests for eligible services without having to spend an excessive amount of time working with an applicant.” *See* Request for Review of the Decision of the Universal Service Administrative Company by Schaumburg Community Consolidated School District 54, Schaumburg, Illinois; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Order*, File No. SLD-139065; CC Docket No. 96-45; CC Docket No. 97-21, DA 02-396 (rel. February 22, 2002).

school's purchase of telecommunications services under the E-rate program, is to stop trying to micromanage and second guess who within a school may use a mobile phone and for what purpose. This same exercise is not undertaken for landline telecommunications service and there is no reason why it should be an issue when a school wants to purchase mobile telecommunications services. The USAC Eligibility List should be revised to remove the conditional eligibility of mobile wireless services in the hands of teachers, administrators, security personnel and others a school deems should have mobile communications capability to foster a safe and secure learning environment.

Under the current system, Nextel, as a program vendor, has often been asked by program applicants for its interpretation of the eligibility of the services Nextel provides. While Nextel can and does provide program applicants with a description of its services, Nextel cannot guarantee that its services, if actually used in a manner arguably inconsistent with the USAC cellular service eligibility criteria, will be deemed eligible. It is inherent in the nature of mobile communications that phones move. A teacher using a wireless phone in a classroom in the morning may well use that same phone on the school's soccer field that afternoon. Teachers may use wireless phones to communicate with school administrators, school maintenance and security personnel and even school bus drivers to alert personnel to developing problems or last minute schedule changes. Nextel has been and remains at a loss as to how to explain and interpret for schools the "guidance" provided by SLD regarding the use of wireless services in these and other common instances.

Another glaring problem with the current USAC Eligibility List that must be fixed regardless of any other change in the program is the statement that cellular service is not

fundable under the program if it is “used only” for security purposes.⁵ Schools that have relied upon this language to apply for and to receive funding for mobile wireless service contracts that may include some security personnel in some cases have had their overall funding requests rejected. This situation cries out for resolution in favor of providing the flexibility to schools to select their telecommunications service providers and preferred technologies. Limiting — or in some cases, denying — access to cost effective two way voice communications in a school emergency situation is not only short-sighted, it ignores the important question of what schools actually need to ensure a safe, secure and comfortable learning environment.

Moreover, such a service eligibility policy is inequitable when the Commission specifically has determined that pagers in the hands of school security personnel are fully eligible for E-rate program funding.⁶ The USAC Eligibility List makes sharp distinctions within subcategories of commercial mobile wireless services as to whether the funding of school security services is permissible. The Eligibility List unequivocally endorses paging services for school security applications, while the status of cellular or dispatch two-way wireless voice service is left quite uncertain. This is not at all helpful for schools. Many schools understand the advantages of having Nextel’s Direct Connect[®] or even cellular service as a real time, two way voice communications system that is a substantially superior technology to traditional

⁵ See Schools and Libraries Eligible Services List at 2 (dated October 17, 2001).

⁶ See Schools and Libraries Eligible Services List at 8 (dated October 17, 2001); *see also* Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, 13 FCC RCd 5318, 5465 at n. 777 (1997) (noting that “paging carriers may receive universal service support for providing discounted paging services to eligible schools and libraries, provided those telecommunications services are used for educational purposes only.”).

paging services as well as a cost effective alternative. The uncertainty of the funding criteria, however, means that many schools, unwilling to take the risk that they may be denied funding for all the services they seek, are choosing to forego an extremely cost effective, highly functional service that enhances learning by fostering a safe and secure educational environment. If the Commission does nothing else, it must address the inconsistency of treatment between paging service and cellular service and give schools the tools they seek to create a secure learning environment.

Schools have encountered other instances where the USAC Eligibility List is confusing and may lead to inappropriate denials of funding for eligible service. One example is where a school specifies that it seeks funding for two way radio service, which is deemed an ineligible service on the current USAC list. However, if the same school specifies Nextel's Direct Connect[®] service as the service applied for, then the application should be processed without a problem. In fact, once Nextel realized there was the potential for confusion on the part of schools in the application process, it approached the Commission and USAC, and USAC published an internal directive to its application processors stating that Nextel's Direct Connect[®] service is eligible for funding. For the unfortunate school that fails to specify Direct Connect[®] as the service it seeks, however, it is likely that its application for service funding will be rejected.

Thus, it is plain that the Commission should take long overdue steps to create some certainty on the issue of basic service eligibility by directing revisions to USAC's approach to wireless service funding. In this instance, creating certainty would not come from additional unpeeling of the onion and further specifying acceptable conditional use of wireless services. Rather, program beneficiaries and the public would be far better served by removing any conditions on the eligibility of mobile wireless services for E-rate discount. In that regard, the

Commission ought to place landline and mobile wireless services in the same unconditionally “eligible” category. Such an action will make the entire application process simpler and fairer, as well as streamline the SLD application review process.⁷

III. The Commission Should Empower Schools to Make Responsible Choices.

From the inception of the E-rate program, both legislators and regulators emphasized the need for schools and libraries to have flexibility in selecting the services and technologies that best fit their perceived needs. For example, Congress designated that there be a Federal-State Joint Board charged with an initial review and with making recommendations to the Commission regarding universal service issues, including implementation of the E-rate mandate.⁸ The Joint Board came squarely down in favor of providing the program beneficiaries, schools and libraries, with the flexibility necessary to purchase whatever package of telecommunications services they believe would meet their telecommunications needs most effectively and efficiently. In 1996 the Joint Board stated:

We conclude that maximum flexibility will satisfy the goals of section 254, given the varying needs and preferences of different schools and libraries. We also find that allowing schools and libraries to choose appropriate services will maximize the value generated by universal service support and minimize inefficient uses of services. Empowering schools and libraries to choose the services best suited for their needs is critical to achievement of the

⁷ Creating certainty for the use of wireless services would also address the liability issues that service providers now encounter in their program participation. Indeed, placing wireless services in the unconditional “eligible” category will greatly reduce the risk that service providers will be asked to repay discounted funding to USAC in those instances when USAC determines that services that have already been provided were funded in error. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, Order*, CC Docket No. 97-21; CC Docket No. 96-45 (rel. October 8, 1999) *Petitions for Reconsideration pending*.

⁸ 47 U.S.C. § 254(a).

important universal services goal of pervasive technology deployment and use in all schools and libraries, regardless of wealth or location.⁹

Nextel has worked with hundreds of schools over the last five years and has struggled along with these schools to assist, where possible, in interpreting the eligibility issues posed by use of a mobile telecommunications device. Based on this experience, Nextel has concluded that all parties would be better served by maintaining maximum flexibility for schools to decide what telecommunications services best suit their needs. Eliminating the “conditional” eligibility of mobile wireless services is key to placing schools and libraries back in the position of making responsible service choices. Certainly making one service only conditionally eligible, while making another substitutable telecommunications service unconditionally eligible can effectively eliminate a school’s ability to choose its preferred service provider. However well intentioned, the micro-management of eligible use of basic telecommunications services by SLD as illustrated by the Eligibility List, must cease.

There is no question that the safety of schools and school children has become a matter of priority in the United States. In response to the growing concerns about school safety, the National Education Association (“NEA”) formed the “Safe Schools Now Network” program, to focus on improving the safety in America’s schools. According to the NEA, “[s]chool safety is a public health issue, and like the national campaigns to eradicate disease and illness, we must fortify families, communities, and schools with information and *tools* to promote school safety

⁹ Federal State Joint Board on Universal Service, *Recommended Decision*, 12 FCC Rcd 87, 321 (1996).

and keep children from harm.”¹⁰ Easily available cellular service is but one example of a tool that can promote school safety.¹¹

Acknowledging that wireless services can play a key role in school safety programs, the National School Safety and Security Services (“NSSSS”) organization¹² has determined that to promote optimal school safety, school officials “should maintain an adequate number of cell phones on campus for administrators, crisis team members, and other appropriate adults. School and safety officials should seek to provide such equipment as a part of their crisis planning.”¹³

Equally important to child safety in schools is the protection of child safety on the way to school. It is a common misperception that educational support personnel, including bus drivers, do not play a part in childrens’ education. As the NEA has reported, “Educational Support Personnel tend to work with children in a non-threatening way, [and thus] they may have a special role to play in reaching out to students.”¹⁴ As such, bus drivers and other personnel responsible for transporting our nation’s children to and from educational facilities must also be equipped with the tools necessary to promote child safety. In a recent NEA report on public school bus drivers, the importance of communications in emergency situations was recognized:

¹⁰ <<http://www.nea.org/issues/safescho/>>

¹¹ As one teacher recently recognized, wireless handsets play an integral role when school telephone systems black-out “because of heavy rains and strong winds.” Moreover, “[I]n case of emergencies, cell phones can be the only lifeline out of the school facility. Remember Columbine?” <<http://www.nea.org/neatoday/0103/debate.html>>

¹² NSSSS is a Cleveland, Ohio-based, national consulting firm specializing in school security and crisis preparedness training, security assessments, and related safety consulting for K through 12 schools and law enforcement, among others.

¹³ <http://www.schoolsecurity.org/trends/cell_phones.html>

The scope of the equipment used to communicate as a school bus driver has expanded to include CB radios, cell phones, pagers, video surveillance equipment, and more. Both communities and administrators often overlook one of the most important benefits of the resident public school bus driver. She/he has instant access to emergency and police personnel, and is out and about in the neighborhood on a regular basis. . . .¹⁵

To better ensure children's safety and advance students' educational development, the Commission must reform the schools and libraries program to permit maximum flexibility for schools to decide what best suits their telecommunications needs. The benefits of such an approach are obvious.

The Commission cannot allow its previous interpretation of Section 254's requirement that E-rate discounts be provided only for "educational purposes" to exclude use of cost effective wireless services that can save lives and property in an emergency.¹⁶ Educational groups have strongly endorsed the notion that protection of school children is part and parcel of a school's educational mission and learning is enhanced by creating and supporting a secure learning environment. In light of this, it can no longer be said that communications used for the purpose of protecting school children are not being employed for "educational purposes."¹⁷ If the

(..continued)

¹⁴ <<http://www.nea.org/issues/safescho/broadcast/safeschools/news.html>> "Safe School-Community Programs in Arizona Ranked the Best in the Nation, April 27, 2000."

¹⁵ <http://www.nea.org/esp/jobs/busqual_6.htm>

¹⁶ See Notice at ¶ 21. "[W]e have interpreted the statutory requirement that universal service discounts be provided only for "educational purposes" to exclude use by [] support staff. We seek comment on whether broadening eligibility for wireless services under the schools and libraries mechanism, would improve the application review process and whether it would increase opportunities for fraud and abuse."

¹⁷ Further, as the Commission itself appears to recognize, it is not competitively neutral to delve into the "educational purpose" of wireless telecommunications services, but fail to apply the same standard to landline telecommunications services. Notice at ¶ 21.

Commission insists on interpreting “educational purpose” narrowly, then it will have no choice but to make landline telecommunications services conditionally eligible. Obviously, such an action will create far more complication than a decision simply concluding that all modes of telecommunications services are eligible. At that point, the Commission is properly putting the choice back into the hands of the schools.

IV. Conclusion

Nextel remains committed to ensuring that students nationwide have access to telecommunications services and to the Internet. To help realize this goal, the Commission must take affirmative steps to address the needs of schools and libraries *today*, and recognize that these needs may change to require the use of new services or the use of traditional services in different ways. In particular, the Commission must modify the service eligibility criteria for USAC to permit schools and libraries the flexibility to choose the services that most efficiently and effectively fulfill their needs. Further, the Commission must broaden substantially the eligibility of wireless services and remove the “conditional eligibility” status of such services. Not only would this eliminate the ongoing confusion among applicants in need of wireless service, but

also it would finally provide schools and libraries the freedom to foster safe and secure learning environments through the use of communications services. Such freedom to choose appropriate telecommunications services lies at the core of the universal service E-Rate program and the Commission must take the steps necessary to ensure that this freedom is achieved.

Respectfully submitted,

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